

Navajo Nation Ethics in Government Law

Ethics and Rules Office Plan of Operation

Garnishment Act



November 2007

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Subchapter 1. Title and Purpose; Definitions

§ 3741. Title

This Chapter may be cited as the Navajo Nation *Ethics in Government Law*.

§ 3742. Legislative purpose and intent

- A. Purpose. Where government is founded upon the consent of the governed, the people are entitled to have complete confidence in the loyalty and integrity of their government. The purpose of the Navajo Nation *Ethics in Government Law*, therefore, is to require accountability to the people of the Navajo Nation by their elected, appointed and assigned public officials and employees in exercising the authority vested or to be vested with them as a matter of public trust, by:
1. Establishing and requiring adherence to standards of conduct to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such officials and employees which permits opportunities for private gain or advantage to influence government decisions;
 2. Requiring public officials and employees to abstain from using any function of their office or duties in a manner which could place or appear to place their personal economic or special interests before the interests of the general public.
- B. Intent. It is the intention of the Navajo Nation Council that the provisions of this Navajo Nation *Ethics in Government Law* be construed and applied in each instance, so as to accomplish its purposes of protecting the Navajo People from government decisions and actions resulting from, or affected by, undue influences or conflicts of interest.

§ 3743. Definitions

As used in this Chapter:

- A. "Business" includes any enterprise, organization, trade, occupation or profession whether or not operated as a legal entity for profit, including any business, trust, holding company, corporation, partnership, joint venture, or sole proprietorship, consultant or other self-employed enterprise.
- B. "Business with which the person is associated" includes any business in which the person or a member of the person's immediate family is a director, officer, partner, trustee or employee, holds any position of management or receives income in any form such as wages, commission, direct or indirect investment worth more than one thousand dollars (\$1,000) or holds any ownership, security or other beneficial interest, individually or

combined, amounting to more than ten percent (10%) of said business.

- C. "Candidate for public office" means any person who has publicly announced such intent, authorized promotion for, or filed a declaration of candidacy or a petition to appear on the ballot for election as a public official; and any person who has been nominated by a public official or governmental body for appointment to serve in any public capacity or office.
- D. "Committee" means the Ethics and Rules Committee of the Navajo Nation Council.
- E. "Compensation" or "income" means any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense or any combination thereof.
- F. "Confidential information" means information which by law or practice is not available to the public at large.
- G. "Conflict of interest" means the reasonable foreseeability that any personal or economic interest of a public official, or employee, will be affected in any materially different manner from the interest of the general public, by any decision, enactment, agreement, award or other official action or function of any governmental body or political subdivision of the Navajo Nation.
- H. "Dependent business" means any business, as defined herein, in which the person or members of the person's immediate family, individually or combined, have any direct or indirect ownership, investment, security or other beneficial interest amounting to more than twenty percent (20%) of such business.
- I. "Employee" means any person or entity working for, or rendering or exchanging any services or performing any act for or on behalf of another person, organization or entity in return for any form of pay or other compensation or thing of value received or to be received at any time temporarily, permanently or indefinitely, in any capacity; whether as agent, servant, representative, consultant, advisor, independent contractor or otherwise.
- J. "Employment" means the status or relationship existing or created by and between a person designated or acting as an "employee" as defined herein and the person, organization, group or other entity for whom or on whose behalf any such work, acts, services or other benefit has been, is being or will be rendered or performed for pay or any other form of compensation.
- K. "Economic interest" means an interest held by a person, members of the person's immediate family or a dependent business, which is:
 - 1. Any ownership, income, investment, security or other beneficial interest in a business, or

2. Any employment or prospective employment for which negotiations have already begun.
- L. "Gift" includes any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received without equivalent consideration and not extended or provided to members of the public at large.
- M. "Governmental body" means any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency, and any establishment of the Executive, Administrative, Legislative or Judicial Branch of the Navajo Nation, and certified Chapters of the Navajo Nation.
- N. "Immediate family" includes spouse, children and members of the household of public officials, public employees and candidates for public office, as defined in this Chapter.
- O. "Ministerial action" means an action that a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or in the exercise of, the person's own judgment upon the propriety of the action being taken.
- P. "Official discretionary action" means any official function of public office or employment, including any vote, decision, opinion, allocation, recommendation, approval, disapproval, finding, delegation, authorization, contract, commitment, settlement, disbursement, release or other action which involves the exercise of discretionary authority, for, on behalf of or in any manner affecting any interest or property of the Navajo Nation, including any governmental body, political subdivision or member thereof.
- Q. "Public employee" means any employee, as defined herein, temporarily, periodically, permanently or indefinitely in the employment of the Navajo Nation, and/or any governmental body thereof as defined herein, including intergovernmental personnel.
- R. "Public office" means any elected or appointed office or position of permanent or temporary employment in any governmental body of the Navajo Nation as defined herein.
- S. "Public official" means any person holding an elective or appointed office in any governmental body of the Navajo Nation as defined herein, including grazing committee members.

Subchapter 2. Standards of Conduct and Restricted Activities of Public Officials and Employees

§ 3744. Conduct in conformity with applicable rules and laws

Public officials and employees shall at all times conduct themselves so as to reflect credit upon the Navajo People and government; and comply with all applicable laws of the Navajo Nation with respect to their conduct in the performance of the duties of their respective office or employment.

§ 3745. General prohibitions; conflicts of interest

- A. No public official or employee shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing, their private economic gain or that of any special business interests with which they are associated, before those of the general public, whose paramount interests their office or employment is intended to serve.

- B. It is the intent of this Subsection (B) that public officials and employees of the Navajo Nation avoid any action, whether or not specifically prohibited by the Standards of Conduct set out herein, which could result in, or create the appearance of
 - 1. Using public office for private gain;
 - 2. Giving preferential treatment to any special interest organization or person;
 - 3. Impeding governmental efficiency or economy;
 - 4. Losing or compromising complete independence or impartiality of action;
 - 5. Making a government decision outside official channels; or
 - 6. Adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation.

§ 3746. Use of confidential information for private gain

No public official or employee shall use or disclose confidential information gained in the course of or by reason of their official position or activities, to further their own economic and personal interest or that of anyone else.

§ 3747. Restrictions against incompatible interests or employment

- A. Public officials and employees shall not:

1. Have direct or indirect financial or other economic interests nor engage in such other employment or economic activity which, as determined in accordance with the provisions of this Chapter and other applicable laws of the Navajo Nation, necessarily involve inherent substantial conflict, or appears to have such substantial conflict, with their responsibilities and duties as public officials or employees of the Navajo Nation; nor
 2. Engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through their public office or employment; nor
 3. Acquire any economic or other financial property, contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.
- B. Subject to the restrictions and conditions set forth in this Chapter, public officials and employees are free to engage in lawful financial transactions to the same extent as the general public. Governmental bodies and agencies of the government of the Navajo Nation may, however, adopt further approved restrictions upon such transactions or employment as authorized herein and by other applicable laws of the Navajo Nation, in light of special circumstances or their particular duties.
- C. No business or other entity shall employ a public official or employee if such employment is prohibited by or otherwise violates any provision of this Chapter.
- D. The term "employment", within the meaning of this Section, includes professional services and other services rendered by a public official or employee, whether rendered as an employee, consultant or other independent contractor.

§ 3748. Abstention from official action

- A. When a public official or employee is required to take official action on a matter in which such public official or employee has a personal economic interest, they should first consider eliminating that interest. If that is not feasible nor required under § 3747 above, such public official or employee shall:
1. Prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such public official or employee is aware of such conflict and they shall deliver copies of such statement to the responsible party for inclusion in the official record of any vote or other decision or determination and also to the Ethics and Rules Committee;
 2. Abstain from voting, sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance such person's personal economic interest in such matter; and

3. Abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise directed by the authorized presiding official of the governmental body making such decision or determination, or otherwise legally required by law, (such as the vote of an elected representative delegate which is cast on behalf of his or her electorate constituents), or unless such person's vote, position, recommendation or participation is contrary to their personal economic interest.
- B. Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body, agency or commission to take such action or vote upon such matter.
 - C. Public employees shall also deliver a copy of such statement to the Committee and to their immediate superior, if any, who shall assign the matter to another. If such employee has no immediate superior, he or she shall take such steps as the Committee shall prescribe or advise, to abstain from influencing actions and decisions in the matter.
 - D. In the event that a public official's or employee's participation is otherwise legally required for the action or decision to be made, such person and the presiding official or immediate superior requiring such participation shall fully report the occurrence to the Committee.

§ 3749. Navajo Nation government contracts; restrictions and bid requirements

- A. No public official or employee or any member of such person's immediate family shall be a party to, nor have an interest in the profits or benefits of, any governmental contract of the Navajo Nation or of any investment of funds of the Navajo Nation, unless the contract or the investment meets the following requirements:
 1. The contract is let by notice and competitive bid or procurement procedures as required under all applicable laws, rules, regulations and policies of the Navajo Nation, for necessary materials or services for the governmental agency or entity involved;
 2. If the continuous course of a business commenced before the public official or employee assumed his or her current term of office or employment;
 3. The entire transaction is conducted at arm's length, with the governmental agency's full knowledge of the interest of the public official or employee or a member of his or her immediate family;
 4. The public official or employee has taken no part in the determination of the specifications, deliberations or decision of a governmental agency with respect to

the public contract; and

5. The public official or employee is not a member, office holder, employee or otherwise directly associated with the same governmental agency or entity primarily responsible for letting, performing, receiving, regulating or otherwise supervising the performance of the contract.
- B. The requirements of §3749(A) shall not apply to the negotiation, execution, award, transfer, assignment or approval of mineral or non-mineral leases, permits, licenses and like transactions other than contracts involving the investment, award or payment of government funds; provided, that such leases, permits, licenses and like transactions shall be subject to all other provisions of this Section and to all other applicable laws, rules and regulations of the Navajo Nation and its governmental bodies; and provided further that §3749 (A) shall likewise fully apply to all contracting and other activities, conducted thereunder, which are subject to this Chapter. Provisions in accordance with the purposes and intent of this Chapter shall be incorporated as part of the rules, regulations and guidelines applicable to the negotiation, approval and assignment of such leases, permits, licenses and like transactions.
 - C. In the absence of bribery or a purpose to defraud, a public official or employee or a member of his or her immediate family shall not be considered as having an interest in a public contract or the investment of public funds, when such a person has a limited investment interest of less than ten percent (10%) of the ownership of net assets, or an interest as creditor of less than ten percent (10%) of the total indebtedness of any business or other entity which is the contractor on the public contract involved or in which public funds are invested, or which issues any security therefor.

§ 3750. Restrictions on assisting or representing other interests before governmental bodies for compensation

No public official or employee except an employee of a governmental body duly established and authorized for such purposes by the Navajo Nation shall represent or otherwise assist any person or entity other than the Navajo Nation or a governmental body or political subdivision thereof, for compensation, before any governmental body where the matter before the governmental body is of a non-ministerial nature. This Section shall not be construed to prohibit the duties of elected or appointed public officials to represent their constituents' interests before government agencies or entities nor the performance of ministerial functions, including but not limited to the filing or amendment of tax returns, applications for permits and licenses, and other documents or reports. It does, however, prohibit representation of such other interests for any fee or compensation in seeking to obtain any legislation, contract, payment of any claim or any other governmental benefit.

§ 3751. Restrictions on assisting or representing other interests subsequent to termination of public office or employment

- A. No former public official or employee nor partner, employee or other associate thereof

shall, with or without compensation, after the termination of such public office or employment, knowingly act as agent or attorney for or otherwise represent any other person or entity (except the Navajo Nation, its governmental bodies or political subdivisions) by formal or informal appearance nor by oral or written communication, for the purpose of influencing any governmental body of the Navajo Nation or any officer or employee thereof, in connection with any proceeding, contract, claim, controversy, investigation, charge or accusation, in which such former public official or employee personally and substantially participated, through approval, disapproval, recommendation, rendering of advice, investigation or otherwise, while so acting or employed.

- B. With respect to any such matter which was actually pending among such former public official's or employee's responsibilities, but in which such person did not participate as set forth in Subsection (A), the prohibitions set forth hereunder shall apply for the period of two years following the termination of such public office or employment.
- C. Nothing in this Chapter shall prevent a former public official or employee from appearing and giving testimony under oath, nor from making statements required to be made under penalty of perjury, nor from making appearances or communications concerning matters of a personal and individual nature which pertain to such former public official or employee or are based upon such person's own special knowledge of the particular subject involved, not otherwise privileged from disclosure by other applicable law; and provided further, that no compensation is thereby received other than that which is regularly provided for witnesses by law or regulation.
- D. The Navajo Nation, its governmental bodies and political subdivisions shall not enter into any contract with, nor take any action favorably affecting or economically benefitting in any manner differently from members of the public at large, any person, business, governmental or other entity, which is assisted or represented personally in the matter by a former public official or employee whose official act, while a public official or employee, directly contributed to the making of such contract or taking of such action by the Navajo Nation or any governmental body or political subdivision thereof.
- E. Nothing contained in this Subsection shall prohibit a former public official or employee from being retained or employed by the governmental entity which he or she formerly served.

§ 3752. Unauthorized compensation or benefit for official acts

- A. No public official or employee shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which is authorized and received in his or her official capacity for performing such duties.
- B. This Section shall not be construed to prohibit the receipt of authorized compensation for

the performance of other distinct and lawful public duties by public officials or employees.

- C. No public official or employee, however, shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive.

§ 3753. Unauthorized personal use of property or funds of the Navajo Nation

No public official or employee shall use any property of the Navajo Nation or any other public property of any kind for other than as authorized and approved for official purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.

§ 3754. Staff misuse prohibited

No public official or employee shall employ, with funds of the Navajo Nation, any unauthorized person(s) nor persons who do not perform duties commensurate with such compensation, and shall utilize authorized employees and staff only for the official purposes for which they are employed or otherwise retained.

§ 3755. Anti-nepotism

No public official or employee shall employ, appoint, or otherwise cause to be employed, nor nominate, nor otherwise influence the appointment or employment to any public office or position with the Navajo Nation or any governmental or political subdivision thereof, any person or persons related by consanguinity or affinity within the third degree, nor any member of the same household as said public official or public employee. Assignment of such persons to duties, positions, governmental offices or other entities shall in all instances be made in strict compliance with the current provisions of the Personnel Policies and Procedures of the Navajo Nation, as amended from time to time.

§ 3756. Restrictions against gifts or loans to influence official acts

Except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Ethics and Rules Committee of the Navajo Nation Council, or by other applicable law, no public official or employee shall solicit or accept for himself/herself or another, any gift, including economic opportunity, favor, service, or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:

- A. Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any governmental office or entity with which the public official or employee is associated or employed; or

- B. Conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the public official or employee is associated or employed; or
- C. Has any interest which, within two years, has been directly involved with, or affected by, the performance or non-performance of any official act or duty of such public official or employee or of the government office or entity with which the public official or employee is associated or employed or which the public official or employee knows or has reason to believe is likely to be so involved or affected.

§ 3757. Permitted gifts, awards, loans, reimbursements and campaign contributions

Section 3756 shall not be construed to prohibit:

- A. An occasional non-pecuniary gift, insignificant in value;
- B. Gifts from and obviously motivated by family or social relationships, as among immediate family members or family inheritances;
- C. Food and refreshments customarily made available in the ordinary course of meetings where a public official or employee may properly be in attendance;
- D. An award or honor customarily and publicly presented in recognition of public service; and/or
- E. A political campaign contribution, in accordance with all applicable election laws and provided that such gift or loan is actually used in the recipient's political campaign for elective office of a governmental body or political subdivision thereof and provided further that no promise or commitment regarding the official duties of office or employment is made in return for such contribution.

§ 3758. Adoption of supplemental codes of conduct for official and employees of governmental entities of the Navajo Nation

- A. The chief executive or administrator of every governmental entity of the Navajo Nation which is subject to the provisions of this Chapter is authorized to submit for approval and adoption by the Committee such supplemental rules, regulations and standards of conduct for the public officials and employees of such entity, which are necessary and appropriate to the special conditions relating to their particular functions, purposes and duties and not in conflict with the purposes and other provisions of this Chapter. Upon adoption, such supplemental standards, rules and regulations shall be implemented in the same manner and to the extent applicable, as are all other standards, rules and regulations provided and adopted in accordance with the provisions of this Chapter.

- B. The Ethics and Rules Committee is also authorized to adopt supplemental rules, regulations, and standards of conduct for all elected officials as defined by the Navajo Nation Code.
- C. Other Navajo Nation Political Governing Bodies.
 - 1. Other political governing bodies of the Navajo Nation are authorized and directed to draft, adopt, implement and administer standards of conduct, disclosure requirements and other procedures, rules and regulations in conformity with the purposes and provisions of this Chapter.
 - 2. Any lawful authorization for any sponsorship or conduct of participation or involvement in any business activity by any political subdivision of the Navajo Nation shall be conditioned upon its prior adoption of such provisions, and enforcement thereof, as approved by the Committee.
- D. The Committee and the Navajo Nation Department of Justice shall provide such assistance as needed and requested by such governmental entities and political governing bodies of the Navajo Nation, in the preparation and drafting of such supplemental and implementing provisions as authorized and which are not in conflict with the purposes and provisions of this Chapter.

Subchapter 3. [Repealed]

Subchapter 4. Implementation and Compliance with *Ethics in Government Law*; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations

§ 3766. Ethics and Rules Committee of the Navajo Nation Council - Powers and duties

In accordance with all powers and authority as provided in 2 N.N.C. §§ 831–835 and in addition, the Committee shall have the specific duties, responsibilities and authority to:

- A. Adopt, amend and publish rules and regulations to implement all provisions of this Chapter. Before such rules and regulations are enacted a 45-day public notice and comment period shall be allowed.
- B. Ensure that all appropriate measures are taken for protecting the confidentiality of all statements, records, documents, other materials and information designated as such by this Chapter or by any other applicable rules or regulations of the Navajo Nation or other competent jurisdiction.
- C. Provide written advisory opinions to guide the conduct and address specific questions when requested by officials and employees who are subject to this Chapter.
 - 1. All opinions shall be confidential and maintained on record within the Ethics and

Rules Office;

2. All opinions shall be binding upon the Committee, with regard to matters related to the specific request, until amended or revoked by the Committee.
- D. The Committee may initiate and/or receive, review and/or investigate complaints filed with the Ethics and Rules Office.
- E. The Committee shall conduct Administrative Hearings to determine violations or noncompliance with this Chapter. All Committee hearings shall follow Rules of Procedures established and adopted by the Committee. The director shall be charged with the responsibility of representing the Navajo Nation in bringing forth all complaints filed under this Chapter.

§ 3767. Retaliation prohibited

- A. Retaliation against any party or witness to a complaint shall be prohibited. Retaliation shall include any form of adverse or punitive action. This protection shall also be afforded to any person(s), including Ethics and Rules Office staff, offering testimony or evidence or complying with directives of the Committee.
- B. Any violations shall be subject to penalties under this Chapter, as well as obstruction and contempt violations of both the civil and criminal codes of the Navajo Nation.

§ 3768. Dismissals

Upon recommendation of the Ethics and Rules Office, the Committee may dismiss any complaint which the Committee determines has insufficient facts to constitute a violation or noncompliance to this Chapter; or if there is insufficient evidence to support the allegations; or if the Committee lacks personal and subject matter jurisdiction.

§ 3769. Statute of Limitations

No action shall be brought under this Chapter more than four years after cause of action has accrued.

§ 3770. Administrative hearings

- A. The Committee, in the capacity of a quasi-judicial body, shall conduct administrative hearings on any alleged violation or noncompliance.
- B. The Ethics and Rules Office shall act in the capacity of complainant on matters to be heard by the Committee.
- C. The Hearing body may impose or recommend any sanctions, civil damages, restitution,

or other penalties provided in this Chapter, or refer their findings to other appropriate entities for action.

§ 3771. Appeals to Supreme Court

- A. The Supreme Court of the Navajo Nation shall have jurisdiction to hear appeals from final decisions. Appeals shall be limited to questions of law.
- B. A notice of appeal shall be filed within 10 working days of the issuance of a written decision.

§ 3772. Deliberations by the committee

In any complaint where the accused is the President, Vice-President, Chief Justice, or other judges of the Navajo Nation, Chapter official or a Council Delegate, the Ethics and Rules Committee, upon completion of the administrative hearing, shall deliberate in executive session and by resolution render its findings of facts, conclusions of law and recommendations for sanction.

§ 3773. [Repealed]

§ 3774. Committee's power as a quasi-judicial body

- A. The Committee shall hold in contempt any person found disobeying any lawful order, process writ, finding or direction of the Committee.
- B. The Committee is authorized to administer oaths and issue subpoenas to compel attendance and testimony of witnesses, or to produce any documents relevant to the matter before the Committee.
- C. The Committee shall maintain a complete record of all hearings, including all testimony and documents presented as evidence.
- D. The Committee shall not be bound by formal rules of evidence.
- E. The Committee shall conduct all hearings in open session. All records, transcripts, and other documents in the possession of the office shall remain confidential unless such information are submitted by the office as evidence.
- F. The Committee shall cause a copy of any order or decision to be delivered to the appropriate branch of the government.

§ 3775. Committee conflict of interest

No Committee member shall hear matters before the Committee which involve a member

of his/her immediate family and/or personal economic interest.

§ 3776. Independent legal counsel

Subject to all applicable laws, the Committee may obtain independent legal counsel to assist and advise the Committee.

§ 3777. Special prosecutors

- A. Notwithstanding any provision in this Chapter, any Special Prosecutor appointed pursuant to 2 N.N.C. §§ 2021 - 2024 shall have the following powers and authority in connection with any administrative proceeding under this Chapter, exercisable in the name of the Navajo Nation, with respect to any matter within such Special Prosecutor's jurisdiction:
1. To file a complaint with the Committee alleging a violation of this Chapter by any person subject thereto;
 2. To prosecute the complaint and represent the Navajo Nation's interest in any and all proceedings thereon;
 3. To exercise an unconditional right to intervene and be substituted as the complainant in any proceeding pending under this Chapter, without regard to the stage of such proceedings; and
- B. In the event of any administrative proceeding under this Chapter in which the Navajo Nation, through a Special Prosecutor, is a complainant against a person, any other complaint filed against such person hereunder (whether filed before or after the date on which the Navajo Nation became complainant) shall abate and shall be dismissed without prejudice, as to any common allegation of prohibited conduct.

§ 3778. [Repealed]

§ 3779. Other relief not barred

Nothing herein shall be construed as foreclosing the right of the Navajo Nation, through a Special Prosecutor or otherwise, to initiate proceedings to secure the relief and sanctions referred to in §§ 3781 or 3782 of this Chapter.

Subchapter 5. Sanctions and Penalties

§ 3780. Administrative sanctions; collection of judgments

- A. Upon finding that there has been violation of any provision of this Chapter, the Committee may impose any or all of the following penalties or sanctions:

1. Removal, discharge or termination from public office or employment in accordance with applicable Navajo Nation law and procedure.
 2. Disqualification for all elective public offices of the Navajo Nation and/or appointment to or employment in any public office of the Navajo Nation, for five years from the effective date of removal, discharge or any other termination of public office or employment of the Navajo Nation.
 3. Suspension from public office or employment and forfeiture of all compensation and benefits accruing therefrom, for not less than 30 days nor for more than one year.
 4. Accordingly, any public employee of the Navajo Nation shall be subject to discipline, including suspension without pay or other benefits and dismissal as provided by other laws, regulations and personnel policies or procedures applicable thereto.
 5. Issuance of a written public reprimand, which shall be entered into such person's permanent record of employment or office and upon the permanent record of the public office or entity of which such person is a member or employee, according to provision of applicable Navajo Nation law and procedures.
 6. Issuance of a private reprimand to such person, with or without suspension of any or all other sanctions provided herein.
 7. Imposition of restitution or such other civil penalties as hereinafter provided under §3781.
- B. Any person who is found to have violated any provisions of this Chapter shall forfeit any elective public office. This forfeiture provision shall not apply to any person against whom the only sanction imposed under §3780(A) is for a suspension from public office, or a written public reprimand, or private reprimand, or restitution of less than one thousand dollars (\$1,000).
- C. No sanctions or penalty provided herein shall limit any other powers of the Navajo Nation Council, Navajo Nation Courts, Judicial, Executive or Legislative Branches of the Navajo Nation, nor of any other entity or administrative officials or employees under other applicable law, rules, regulations or procedures.
- D. Judgments issued pursuant to the *Ethics in Government Law* which include the payment of money may be collected in any manner authorized for recovery of debts owed the Navajo Nation, including but not limited to garnishment proceedings as authorized by Navajo Nation law and offset provisions of the Navajo Nation Business and Procurement Act, 12 N.N.C. §1501 *et seq.*

§ 3781. Other civil damages

- A. A person found in violation of this mandate shall be further subject to, and personally liable for the following provisions, without regard to the imposition of any administrative sanction or criminal conviction:
 - 1. Any public official or employee who violates any economic disclosure or reporting requirement of this Chapter may be held liable to the Navajo Nation for civil damages in an amount not to exceed the value of any interest not properly reported.
 - 2. Any public official or employee who realizes an economic benefit as a result of violation of any prohibition or restriction set forth in Subchapter 2 and 3 of this Chapter shall be liable to the Navajo Nation for civil damages in an amount not exceeding three times the amount or value of the benefit or benefits so obtained.
- B. If two or more persons are responsible for any violation, each of them shall be liable to the Navajo Nation for the full amount of any civil damages prescribed herein, the full amount of which may be imposed upon and collected from each of them individually.
- C. Any civil penalties imposed hereunder shall be collected in any manner authorized for recovery of debts or obligations owed to the Navajo Nation and shall be paid into the General Fund of the Navajo Nation.
- D. No imposition of any or all civil damages provided herein shall be a bar to institution of any civil, criminal or misdemeanor action, liability, judgment, conviction or punishment otherwise applicable hereto, nor shall determination of any such civil damages be barred thereby.

§ 3782. Misdemeanor violations; punishments

The Navajo Nation, through the Office of the Prosecutor or Special Prosecutor shall be responsible for the enforcement of the following Subsection.

- A. Any person who is convicted or found guilty of knowingly and willfully violating any provision of Subchapter 2 of this Chapter is guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.
- B. Any person knowingly and willfully filing any complaint authorized under this Chapter or by any other applicable law, without just cause and with malice or other improper purpose, including personal, political or other harassment or embarrassment, shall be guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.

- C. Upon conviction of any subsequent offense prescribed in Subsection (A) or (B) of this Section, such person shall be fined not less than five hundred dollars (\$500.00) and shall be sentenced to imprisonment of not less than 30 days nor more than 180 days.
- D. A person convicted of a misdemeanor under this Chapter shall not be a candidate for elective public office, nor be eligible for any appointive office of the Navajo Nation, nor any of its governmental entities or political governing bodies; for five years following the date of conviction.
- E. A plea of *nolo contendere* shall be deemed a conviction for purposes of this Chapter.
- F. No criminal or misdemeanor action, judgment, conviction or punishment hereunder shall operate to bar any action for civil damage or penalty or imposition of any administrative sanction provided hereunder, nor be barred thereby.

§ 3783. Severability

If any provision of this Chapter or the application of such provision to any person, firm, association, corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations, corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

§ 3784. Effective date

The effective date of all provisions of this Navajo Nation *Ethics in Government Law* shall be October 8, 1984.

§ 3785. Prior inconsistent law superseded

Upon the effective date of this Navajo Nation *Ethics in Government Law*, all prior inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

Subchapter 6. Ethics and Rules Office

§ 3786. Establishment

There is hereby established the Ethics and Rules Office within the Navajo Nation government.

§ 3787. Purpose

The purpose of the Ethics and Rules Office shall be to:

- A. Provide administrative assistance to the Ethics and Rules Committee of the Navajo Nation Council in ensuring adherence to legislative mandates under the Navajo Nation *Ethics in Government Law*, Ethics and Rules Committee Plan of Operation, and other applicable laws of the Navajo Nation;
- B. To represent the interests of the Navajo Nation in maintaining the highest standards of ethical conduct by the elected and appointed public officials, officers and representatives of the Navajo Nation, in the performance of their public and official duties and functions, (includes candidates and public employees);
- C. To maintain and make available for official information, complete and current written records of all laws, resolutions, rules, regulations and other official enactments, rulings, decisions or opinions relating to requirements, prohibitions or standards of ethical conduct or disclosure by elected and appointed public officials, officers, employees and representatives of the government of the Navajo Nation; together with current and complete records of such written disclosures as may be required by the laws of the Navajo Nation; and
- D. To protect the interest of the Navajo People in fair, honest and efficient conduct of the government of the Navajo Nation, in accordance with the laws of the Navajo Nation and the will of the Navajo People, through review, recommendation and sponsorship of projects, legislation, rules and standards in furtherance of these ends.

§ 3788. Personnel and organization

- A. There is established the position of Director for the Ethics and Rules Office and administrative/secretarial staff as may be budgeted by the Navajo Nation Council.
- B. The Ethics and Rules Committee and the Executive Director of the Office of Legislative Affairs shall have the authority to employ the Director of the Ethics and Rules Office.
- C. The Director shall have the authority to hire the administrative/secretarial staff, pursuant to Navajo Nation Personnel Policies and Procedures.

- D. All Ethics and Rules Office personnel shall be subject to the Navajo Nation personnel compensation, benefits, and policies and procedures
- E. The Director of the Ethics and Rules Office shall be administratively responsible to the Executive Director, Office of Legislative Services, in carrying out policies authorized and directed by the Ethics and Rules Committee of the Navajo Nation Council, as provided under Section 3787 of this Subchapter.

§ 3789. Duties, responsibilities and authority

- A. The Director shall have the authority necessary and proper to carry out the purpose set forth in §3787 of this Chapter.
- B. Under general direction, the Director of the Ethics and Rules Office shall have the duties, responsibility, and authority to assist the Ethics and Rules Committee of the Navajo Nation Council to:
 - 1. Provide recommendations to the Ethics and Rules Committee concerning rules and regulations necessary to implement provisions of the Navajo Nation *Ethics in Government Law* and to publish same after proper approval;
 - 2. Prescribe and make available appropriate forms for economic disclosure statements and distribute such forms to all persons required to complete and file with the Ethics Rules Committee of the Navajo Nation Council;
 - 3. Establish policies and procedures for completing and filing economic disclosure statements and provide training as deemed necessary,
 - 4. Maintain current list of all persons required to file economic disclosure statements;
 - 5. Provide for the preservation of economic disclosure statements filed with the Ethics and Rules Committee and ensure their confidentiality in accordance with the Navajo Nation *Ethics in Government Law* and all applicable rules and regulations;
 - 6. Audit, review and evaluate all economic disclosure statements and make available for public access those deemed public records during regular office hours;
 - 7. Provide and maintain written advisory opinions on the requirements of the Navajo Nation *Ethics in Government Law*, upon request from persons whose conduct is subject thereto and who have specific need to use such opinions;
 - 8. Receive, examine and investigate complaints and conduct such hearings, in accordance with rules and regulations lawfully adopted and authorized to determine facts of allegations or noncompliance with provisions of the Navajo

Nation *Ethics in Government Law*;

9. Implement, facilitate and require compliance with all provisions of the Navajo Nation *Ethics in Government Law* in accordance with stated purposes and intent, together with lawfully adopted rules and regulations, and the provisions of the Ethics and Rules Committee, Plan of Operation; and
10. Assist in instituting and conducting hearings on any matter which cannot be resolved by voluntary compliance and/or remedial action.

§ 3790. Political practices prohibited

The staff shall not, for the purpose of personal gain, use any information or conduct any proceedings for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, the President and Vice-President of the Navajo Nation, or any other employee, or officer of the Navajo Nation.

§ 3791. Office location and hours

- A. The administrative office of the Ethics and Rules Office shall be located in Window Rock, Arizona. Mailing address is as follows: P.O. Box 3390, Window Rock, Arizona 86515.
- B. The office shall be open Monday through Friday, between 8:00 a.m. and 5:00 p.m., in the absence of any directive to the contrary from the Director, Ethics and Rules Office.

§ 3792. Construction

Nothing contained in this Plan of Operation shall be construed to limit the authority of the Ethics and Rules Committee of the Navajo Nation Council and/or their representatives in ensuring adherence to and carrying out the legislative intent of the Navajo Nation *Ethics in Government Law* and the Ethics and Rules Committee's Plan of Operation, and all applicable laws of the Navajo Nation.

§ 3793. Amendments

This Plan of Operation may be amended by the Ethics and Rules Committee of the Navajo Nation Council subject to the approval of Intergovernmental Relations Committee of the Navajo Nation Council.

Chapter 7. Navajo Nation *Ethics in Government Law Garnishment Act of 2005*

Section

- 3800. Title
- 3801. Purpose
- 3802. Findings
- 3803. General
- 3804. Definitions
- 3805. Issuance of writ of garnishment; answer; objection; order
- 3806. Limitations upon transfers by garnishee
- 3807. Possession by judgment debtor
- 3808. Restrictions on discharge from employment by reason of garnishment
- 3809. Exemptions and restrictions
- 3810. Maximum allowable earnings subject to garnishment

§ 3800. Title

This Act shall be entitled and referred to as the Navajo Nation *Ethics in Government Law Garnishment Act of 2005*.

§ 3801. Purpose

The purpose of this Act is to allow the remedy of garnishment in the collection of judgments issued by the Ethics and Rules Committee pursuant to the Navajo Nation *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.*

§ 3802. Findings

The Navajo Nation Council finds that:

- A. The Ethics and Rules Committee of the Navajo Nation Council conducts hearings for alleged violations of the Navajo Nation *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.* These hearings involve public elected officials and Navajo Nation employees.
- B. Sanctions for violations of the Navajo Nation *Ethics in Government Law* include removal from or disqualification for elected office, termination of employment, payment of fines and restitution, reprimand and other penalties.
- C. Nonpayment of fines and restitution ordered pursuant to the *Ethics in Government Law* is a growing concern.

§ 3803. General

- A. The remedy of garnishment shall be available for only collection of civil damages,

restitution, fines, and/or penalties pursuant to a judgment, *i.e.*, order or decision, duly issued under the Navajo Nation *Ethics in Government Law*.

- B. The remedy of garnishment is applicable to any of the following:
1. Nonrestricted earnings owing to a judgment debtor by a garnishee.
 2. Nonrestricted assets, including nonrestricted monies, held by a garnishee on behalf of a judgment debtor.
 3. Personal property of a judgment debtor that is in the possession of a garnishee.
 4. Shares and securities of a corporation or a proprietary interest in a corporation belonging to a judgment debtor, if the garnishee is a corporation.
- C. A judgment creditor, or the Navajo Nation Office of Ethics and Rules on behalf of a judgment creditor, in whose favor a money judgment is awarded by the Ethics and Rules Committee of the Navajo Nation Council for violations of the Navajo Nation *Ethics in Government Law* may apply for writ of garnishment for its enforcement at any time within 10 years after entry of the judgment.
- D. A judgment creditor may apply for as many writs of garnishment as are necessary to collect the entire amount of the judgment.
- E. Jurisdiction over garnishment actions initiated pursuant to a judgment issued under the Navajo Nation *Ethics in Government Law* shall lie solely with the courts of the Navajo Nation.

§ 3804. Definitions

For the purpose of garnishment under this Act, the following words shall have the following meanings, unless the context otherwise requires:

- A. **Assets.** Interests in personal property and monies including, among other items, chattels, cash, bank accounts, securities, notes, and accounts receivable, but not including earnings or interests in real property.
- B. **Disposable Earnings.** That part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be exempted or withheld, *e.g.*, FICA, Medicare, federal income tax.
- C. **Earnings.** Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise.
- D. **Federal Minimum Hourly Wage Rate.** The highest federal minimum hourly wage rate for

an eight-hour day and a 40-hour week. It is immaterial whether the garnishee is exempt from paying the federal minimum hourly wage rate.

- E. Garnishee. The third person or entity, including Navajo Nation enterprises, entities, authorities, and corporations, in control or possession of the earnings or assets which are the subject of the garnishment proceeding.
- F. Garnishment. Legal procedure through which the earnings or any other asset of a judgment debtor are required to be withheld by a third party and, upon subsequent court order, released to a judgment creditor for payment of a debt which has been reduced to judgment under the Navajo Nation *Ethics in Government Law*.
- G. Judgment Creditor. A person or entity, including the Navajo Nation and its branches, divisions, departments, programs, enterprises, boards, commissions, and chapters, that has a money judgment in its favor pursuant to an order or decision duly issued under the Navajo Nation *Ethics in Government Law* that is due and unpaid.
- H. Judgment Debtor. A person against whom a money judgment has been awarded pursuant to an order or decision duly issued under the Navajo Nation *Ethics in Government Law*.
- I. Order of Garnishment. Court order directing the garnishee to pay, transfer and/or release nonrestricted earnings or assets of the judgment debtor in the amount or a portion of the amount stated in the writ of garnishment plus costs and fees to the judgment creditor in a specified manner and at a specified time.
- J. Restricted Earnings and Assets. That portion of earnings and/or assets that are exempt from attachment in a garnishment proceeding, including those earnings and assets deemed exempt and restricted by this Act.
- K. Writ of Garnishment. Preliminary court order issued through the Clerk of Court directing the garnishee not to pay, transfer and/or release nonrestricted earnings or assets of the judgment debtor in the amount or a portion of the amount stated in the writ of garnishment and directing the garnishee to file an answer to the writ of garnishment and directing the garnishee to serve the writ of garnishment on the judgment debtor.

§ 3805. Issuance of writ of garnishment; answer; objection; order

In accordance with the rules for garnishment proceedings, as enacted pursuant to 7 N.N.C. §601:

- A. Upon the filing of a proper petition, a writ of garnishment in the amount of the judgment or portion thereof as stated in the petition shall be issued by the Clerk of Court and directed to the garnishee.
- B. The garnishee shall file an answer to the writ of garnishment and serve the writ of garnishment, as well as the answer, on the judgment debtor.

- C. The judgment debtor or other interested person or entity may file an objection to the writ of garnishment or the answer of the garnishee.
- D. If the answer shows that the garnishee was holding nonexempt monies or personal property of the judgment debtor or that the judgment debtor is an employee of the garnishee entitled to future earnings and if no objection to the writ of garnishment is filed, the court will, without hearing issue an order of garnishment.
- E. If an objection to the writ of garnishment is filed and/or the conditions precedent of Subsection (D) are not met, the court will hear the matter without a jury prior to issuing an order of garnishment or ordering the garnishment stopped.

§ 3806. Limitations upon transfers by garnishee

- A. From and after service of the writ of garnishment and until the court issues the garnishment stopped, the garnishee shall not pay, transfer or release any unrestricted asset in the garnishee's possession or under the garnishee's control to which the judgment debtor has an interest or pay and/or release unrestricted earnings owing to the judgment debtor.
- B. The garnishee shall be liable to the judgment creditor for any such payment, transfer, or release prohibited above.

§ 3807. Possession by judgment debtor

- A. At any time before an order of garnishment is issued, the judgment debtor may take possession of any earnings or assets withheld by the garnishee by filing with the court (1) a bond payable to the garnishee in the amount, including costs and fees, set forth in the application for the writ of garnishment, or (2) a bond payable to the garnishee for the value of the earnings and assets to be garnished. The bond shall be conditioned upon the payment of any judgment that may be given against the garnishee or for payment of the value of the property garnished.
- B. When the judgment debtor provides a bond, he may make any objection which the garnishee could make in such action. With or without bond, the judgment debtor may assert any legal objections he may have to the writ of garnishment.
- C. If judgment debtor takes possession of property under this Section and judgment on garnishment is given in favor of the judgment creditor, it shall be against the judgment debtor and the sureties on the judgment debtor's bond for the amount of such judgment.

§ 3808. Restrictions on discharge from employment by reason of garnishment

- A. No employer may discharge any employee by reason of the fact that his or her earnings

have been subject to garnishment.

- B. An employer who willfully violates Subsection (A) of this Section shall be assessed a civil liability of not more than one thousand dollars (\$1,000) payable to the employee.

§ 3809. Exemptions and restrictions

The following earnings and assets shall be restricted and exempt from garnishment:

- A. Benefits paid by the Social Security Administration;
- B. Railroad retirement benefits under the Railroad Retirement Act of 1974, 45 U.S.C. §231;
- C. Retirement benefits, including Civil Servant's Retirement benefits under 5 U.S.C. §8331 *et seq.* and benefits payable by the Navajo Nation pursuant to Navajo Nation defined contribution and/or defined benefit retirement plans;
- D. Military annuities under 10 U.S.C. §1440;
- E. Social welfare benefits including, but not limited to:
 - 1. Aid to Families with Dependent Children, or its successor; and
 - 2. General Assistance;
- F. All monies received by or payable to the judgment debtor pursuant to a child support order;
- G. Earnings payable by the judgment debtor pursuant to a child support order;
- H. Earnings and assets restricted or excepted under 15 U.S.C. §1671 *et seq.*; and,
- I. Interests in real property.

§ 3810. Maximum allowable earnings subject to garnishment

The maximum amount of earnings subject to garnishment shall not exceed the lesser of:

- A. Fifteen percent (15%) of the judgment debtor's disposable income for any pay period; or
- B. The amount by which the judgment debtor's disposable income exceeds 30 times the federal minimum wage (based on a 40 hour work week) in effect at the time the earnings are payable.